IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5256 of 2006
With
CIVIL APPLICATION No. 15005 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
JASHIBEN GEMABHAI JENABHAI GOHEL & 5 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 24.07.2006 of the Motor Accident Claims Tribunal(Aux.), 7th Fast Track Court, Nadiad in MACP No.1479 of 1996 awarding compensation of Rs.1,93,000/- with proportionate costs and interest at the rate of 12% per annum from the date of petition till the date of deposit on account of the death of Gemabhai who died at the age of 45 years in a motor vehicle accident on account of rash and negligent driving of the scooter insured by the appellant – insurance Company.

2. The deceased was returning home from his agricultural field at about 09:00 O'clock in the evening on 13.08.1996 and respondent No.1 herein drove his scooter in a rash and negligent manner and knocked down the deceased. The impact was so severe that the deceased not only fell down on the road, but he received such serious injuries on his scull that he succumbed to the injuries and he died, while his family members were taking him to the hospital. Respondent No.1 ran away from the scene of the accident. The widow aged 38 years and 3 children of the deceased filed the claim petition for compensation of Rs.8 lacs.

3. The Tribunal had no hesitation in holding

the scooter driver entirely responsible for the accident in question. However, on the question of quantum of compensation, the Tribunal made a very conservative assessment of the income of the deceased. The deceased aged 40 years was employed as a labourer on the farm of Khimjibhai Narsinhbhai. According to the claimants, the deceased was getting salary of Rs.2,500/- per month. The Tribunal, however, did not accept the claimant's case and assessed the income of the deceased at Rs.1,500/- per month. No further benefit was given to the claimants by considering the scope of increase in the income in future. Deducting one-third amount as the personal expenditure of the deceased, dependency benefit was assessed at Rs.1,000/- per month i.e. Rs.12,000/- per annum. Adopting multiplier of 15 years, the Tribunal computed the compensation for loss of dependency benefit at Rs.1,80,000/-. Even in the matter of awarding conventional amount, the Tribunal awarded only Rs.10,000/- for loss of consortium and Rs.2,000/- for funeral expenses. No amount has been awarded for loss to the estate. The total compensation of Rs.1,93,000/- is thus, very much on the lower side.

4. The assessment of income is not only conservative, but very much on the lower side.

The deceased was aged 40 years and met with an accident when he was returning home from the agricultural farm. The Tribunal was, therefore, not justified in not accepting even the claimant's case that the deceased was employed in a farm. The claimant's case that the deceased was earning Rs.2,500/- per month deserved to be accepted and on that basis also, the dependency benefit could have been easily assessed at Rs.1,500/- per month i.e. Rs.18,000/- per annum. Even adopting slightly lower multiplier of 13, the compensation for loss of dependency benefit would work out to Rs.2,34,000/-. Adding Rs.20,000/- for loss to the estate and Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses, which were the conventional amounts being awarded till recently, the Tribunal was required to pass an award in the vicinity of Rs.2,70,000/-.

5. In this background, the only contention raised by the learned advocate for the insurance Company is against the rate of interest awarded by the Tribunal, which is 12% per annum from the date of petition till realisation. Without considering the aforesaid under assessment of income and compensation, the rate of interest may seem a little on the higher side, as ordinarily interest is being awarded at the rate of 9% per

annum. However, looking to the extent of under-assessment of the compensation, we are of the view that whatever additional amount has been awarded by way of higher rate of interest between 12% per annum as against 9% per annum, is more than offset by the lower amount of compensation awarded by the Tribunal. Hence, by making it clear that we may not be treated to have approved of the rate of interest awarded by the Tribunal (12% per annum), in the facts and circumstances of the case indicated hereinabove, we are not inclined to entertain this appeal.

6. For the reasons aforesaid, we decline to interfere with the award. The appeal is, therefore, summarily dismissed.

Since the appeal is dismissed, Civil Application for stay is also dismissed.

7. The amount deposited before this Court at the time of filing the appeal shall also be transmitted to the Tribunal within one month from today.

(M.S.SHAH,J.)

(AKIL KURESHI,J.)

mrpandya*